The present civil action involves petitioners' effort to have a three-judge district court enjoin their prosecution; it is premised upon a reiteration of their claims that the designated sections of the Act are unconstitutional. Although deeming petitioners' argument to be substantial,[1] the single district judge declined to order the convening of a three-judge court and dismissed the action on the ground that the complaint failed to show an adequate basis for equitable relief (Pet. App. A). The district judge rejected petitioners' assertions of irreparable harm based on the expense, inconvenience, and personal anxiety in defending the pending criminal prosecution. The court of appeals affirmed, agreeing that the district judge properly looked beyond the prayer for relief and the conclusory allegation of irreparable injury to determine that there were no substantive allegations which would warrant the intervention of equity (Pet. App. B).

The courts below were plainly correct in their view (Pet. App. B 26) that *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713, does not preclude, and in fact suggests, that a single district judge considering a request for a three-judge-court should look beyond the prayer for relief to the substantive allegations invoking equity. The decisions to which petition-

[1] The district court acknowledged, however, that the constitutionality of the statutes involved had been uniformly sustained. See *United States* v. *Biancofiori*, 422 F.2d 584 (C.A. 7), certiorari denied, 398 U.S. 942; *United States* v. *Perez*, 426 F.2d 1073 (C.A. 2), certiorari pending, No. 600, this Term.

ers direct attention are not to the contrary.[2] And the courts below correctly found that in an unprotected area such as loansharking there is plainly no basis for equitable relief against prosecution. *Spielman Motor Co.* v. *Dodge*, 295 U.S. 89, 95; see *Dombrowski* v. *Pfister*, 380 U.S. 479, 483–485. Petitioners' remedy, if the statute is unconstitutional (which we deny), will come on their pending motion to dismiss the indictment.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1970.

---

[2] The Fifth Circuit in *Hargrave* v. *McKinney*, 413 F. 2d 320, in fact canvassed in some detail the various substantive allegations in the complaint in deciding whether a three-judge court should have been convened. And the Seventh Circuit in *National Mobilization Com. To End War in Vietnam* v. *Foran*, 411 F. 2d 934, in dictum simply stated that the complaint alleged a basis for equitable relief, without indicating on what this conclusion was based. The other authorities which petitioners cite do not speak to the issue here posed.